



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

### Docket Number USCG-2023-0207

### RIN 1625-AA87

### Security Zone; Kokosing ROV Survey Operation, Straits of Mackinac, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for navigable waters within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The security zone is needed to protect the remotely operated vehicle survey operations from other vessels. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Ste. Marie.

**DATES:** This rule is effective from May 1, 2023, through May 31, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0207 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Deaven S. Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U. S. Coast Guard at (906) 635-3223 or email [ssmprevention@uscg.mil](mailto:ssmprevention@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical to publish an NPRM by the date operations begin and we must establish a security zone in order to ensure that remotely operated vehicle (“ROV”) operations can be conducted safely.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards posed by vessel traffic to Kokosing Industrial’s ROV survey operations.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034, 70051, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. The Captain of the Port Sault Ste. Marie (COTP) has determined that potential safety hazards posed by other vessels to ROV survey operations within one nautical mile of charted submerged pipeline or cable in the Straits of Mackinac RNA starting May 1, 2023, will be a concern and is establishing security zone within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug

Champion, Tug General and crew boat Timmy V. This rule is needed to protect the vessels and personnel involved in the ROV survey operations from other vessels transiting the Straits of Mackinac at the same time this project is being conducted.

#### **IV. Discussion of the Rule**

This rule establishes a security zone from May 1, 2023 through May 31, 2023. The security zone will cover all navigable waters within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The duration of the security zone is intended to protect personnel and vessels involved with conducting the ROV survey operations. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. Vessel traffic will be able to safely transit around this security zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Local Notice to Mariners about the security zone, and the rule would allow vessels to seek permission to enter the zone.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a

security zone lasting from May 1, 2023 through May 31, 2023 that will prohibit entry within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable in the Straits of Mackinac RNA. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T09-0207 to read as follows:

**§ 165.T09-0207 Security Zone; Tugs Valerie B, Nancy Anne, Champion, and General and crew boat Timmy V operating in the Straits of Mackinac, MI.**

(a) *Location.* The following areas are security zones: All navigable water within 500 yards of the Tugs Valerie B, Nancy Anne, Champion and General and crew boat Timmy V while conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable within the Straits of Mackinac RNA.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16 or telephone at (906) 635-3233. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: April 3, 2023.

A.R. Jones,

Captain, U.S. Coast Guard,

Captain of the Port Sault Sainte Marie

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